
Volume 98
Issue 2 *Dickinson Law Review* - Volume 98,
1993-1994

1-1-1994

An Analysis of Pennsylvania's Legislative Programs for Financially Distressed Municipalities and the Reaction of Municipal Labor Unions

Drew Patrick Gannon

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Drew P. Gannon, *An Analysis of Pennsylvania's Legislative Programs for Financially Distressed Municipalities and the Reaction of Municipal Labor Unions*, 98 DICK. L. REV. 281 (1994).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol98/iss2/6>

This Comment is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

An Analysis of Pennsylvania's Legislative Programs for Financially Distressed Municipalities and the Reaction of Municipal Labor Unions

I. Introduction

In response to the growing problem of financial distress in Pennsylvania's municipalities, the State's General Assembly has passed two comprehensive programs to help its boroughs, towns, and cities out of fiscal trouble.¹ The first piece of legislation, the Municipalities Financial Recovery Act, more commonly known as Act 47, was enacted in 1987 and focuses mainly on smaller communities whose ailing economies had depended largely on the disappearing steel industry.² Then, in 1991, economic woes caught up to the State's largest city, Philadelphia, which faced imminent bankruptcy and certain default on its bond payments.³ In response, the legislature hurriedly passed the Pennsylvania Intergovernmental Cooperative Authority Act (Act 6), designed to assist the city whose needs go far beyond the scope of Act 47.⁴ Both acts provide municipalities with varying forms of assistance in exchange for different levels of state intervention into the financial planning of the distressed municipalities.⁵ Labor unions have questioned the validity of this state intervention and have challenged the legality of both acts on many grounds in the courts of Pennsylvania.⁶

This Comment analyzes the above legislation through recent case law and assesses its impact on the municipalities of Pennsylvania. Part II of this Comment analyzes Act 47 in terms of its purpose, its provisions, and its powers. Part III delves into the labor issues raised by Act 47, focusing on specific challenges to various aspects of the legislation. Part IV discusses Act 6, highlighting the changes and

1. PA. STAT. ANN. tit. 53 §§ 11701.101-.501 (Supp. 1993) and PA. STAT. ANN. tit. 53 §§ 12720.101-.709 (Supp. 1993).

2. PA. STAT. ANN. tit. 53 §§ 11701.101-.501 (Supp. 1993). Act 69 of 1992, made certain amendments to Act 47, the most important of which was to change the title from the Financially Distressed Municipalities Act to Municipalities Financial Recovery Act. The change is intended to provide a less intimidating title and to reduce the stigma attached to municipalities seeking the relief afforded by Act 47.

3. Peter Cooney, *Philadelphia Plagued by Financial Crisis*, Reuter Bus. Rep., Sept. 10, 1990, at 1, available in LEXIS, Nexis Library.

4. PA. STAT. ANN. tit. 53 §§ 12720.101-.709 (Supp. 1993).

5. Compare PA. STAT. ANN. tit. 53 §§ 11701.101-.501 (Supp. 1993) with PA. STAT. ANN. tit. 53 §§ 12720.101-.709 (Supp. 1993).

6. See discussion *infra*, parts III, V.

improvements made by the legislature because of the experiences with Act 47. Part V examines labor's latest challenge to this state intervention, which also reflects lessons learned from the litigation of Act 47. Part VI analyzes the effectiveness of both Act 47 and Act 6 and discusses additional action that municipalities must take to become fiscally strong. Part VII concludes with an evaluation of labor's recourse, the actual impact of the legislation on the municipalities, and the future of state-municipality relations.

II. Act 47

Act 47, Pennsylvania's first legislative recognition of the growing problem of municipal distress, was primarily a response to the problems experienced by small communities in western Pennsylvania that were devastated by the evaporation of jobs due to the decline in the steel industry.⁷ As of 1992, ten of the twelve municipalities determined to be distressed were located in western Pennsylvania.⁸ The economy, however, is not the sole cause of the financial problems. Fiscal mismanagement and administrative inefficiency have also contributed to the problems.⁹

A. Provisions and Powers of Act 47

Act 47 provides criteria for evaluating the fiscal stability of municipalities and procedures for helping the communities regain their fiscal stability.¹⁰ Specifically, the Act empowers the Department of Community Affairs (DCA) to monitor all of the State's municipalities by authorizing the compilation of financial data.¹¹ Armed with this information, the DCA evaluates the data under eleven indicators of possible distress outlined in the Act.¹² If any or all of the criteria are

7. DEPARTMENT OF PUB. ADMIN., GRADUATE SCH. OF PUB. POLICY AND ADMIN. AT PA. STATE UNIV., *COPING WITH FISCAL DISTRESS IN PENNSYLVANIA'S LOCAL GOVERNMENTS: A PROGRAM EVALUATION OF ACT 47, REPORT TO THE GEN. ASSEMBLY OF PENNSYLVANIA* (1991) [hereinafter *COPING WITH FISCAL DISTRESS*].

8. DEPARTMENT OF COMMUNITY AFFAIRS, MUN. PROGRAMS DIV., *STATUS REPORT 2* (Aug. 31, 1992) [hereinafter *STATUS REPORT*].

9. *COPING WITH FISCAL DISTRESS*, *supra* note 7, at 11.

10. PA. STAT. ANN. tit. 53 § 11701.102 (Supp. 1993). Numerous other states have passed legislation addressing the problem of municipal financial distress, including Florida, Illinois, Maine, Michigan, Nevada, New Jersey, New York, North Carolina, and Ohio. *COPING WITH FISCAL DISTRESS*, *supra* note 7, at app. 4. For a summary of the plans of these states, see *id.*

11. PA. STAT. ANN. tit. 53 §§ 11701.121-123 (Supp. 1993).

12. These factors are:

1. The municipality has maintained a deficit over a three year period, with a deficit of 1% or more in each of the previous fiscal years.

met, the DCA has the discretion, upon weighing all of the evidence, to declare a municipality distressed.¹³ Upon such a determination, the DCA must appoint a coordinator who will develop and implement a plan designed to correct the fiscal problems of the municipality.¹⁴ The municipality has the option of rejecting the plan and formulating its own, but it must still obtain the DCA's approval of the plan in order to avoid substantial penalties.¹⁵ Not only can the DCA withhold the assistance provided in Act 47, it may also withhold regular state funding, subject to a few exceptions.¹⁶

2. The municipality's expenditures have exceeded revenues for a period of three years or more.

3. The municipality has defaulted in payment of principal or interest on any of its bonds or notes or in payment of rentals due any authority.

4. The municipality has missed a payroll for 30 days.

5. The municipality has failed to make required payments to judgment creditors for 30 days beyond the date of the recording of the judgment.

6. The municipality, for a period of at least 30 days beyond the due date, has failed to forward taxes withheld on the income of employees or has failed to transfer employer or employee contributions for Social Security.

7. The municipality has accumulated and has operated for each of two successive years a deficit equal to 5% or more of its revenues.

8. The municipality has failed to make the budgeted payment of its minimum municipal obligation as required by . . . the Municipal Pension Plan Funding Standard and Recovery Act, with respect to a pension fund during the fiscal year for which payment was budgeted and has failed to take action within that time period to make required payments.

9. A municipality has sought to negotiate resolution or adjustment of a claim in excess of 30% against a fund or budget and has failed to reach an agreement with creditors.

10. A municipality has filed a municipal debt readjustment plan pursuant to Chapter 9 of the Bankruptcy Code.

11. The municipality has experienced a decrease in a quantified level of municipal service from the preceding fiscal year which has resulted from the municipality reaching its legal limit in levying real estate taxes for general purposes.

PA. STAT. ANN. tit. 53 § 11701.201 (Supp. 1993).

13. *Borough of Dupont v. Department of Community Affairs*, 595 A.2d 688 (Pa. Commw. Ct. 1991) (holding that Section 201 criteria merely indicate financial distress and do not mandate declaration of "distressed" status).

14. PA. STAT. ANN. tit. 53 § 11701.221 (Supp. 1993). The DCA has given only four coordinators the responsibility of developing financial plans: The Pennsylvania Economy League, The Local Government Research Corporation, the law firm of Eckert, Seamans, Cherin & Mellott, and Public Financial Management. LOCAL GOV'T COMM'N, STAFF REPORT ON THE GOV'T OMNIBUS AMENDMENTS TO THE FINANCIALLY DISTRESSED MUNICIPALITIES ACT 4 [hereinafter STAFF REPORT].

15. PA. STAT. ANN. tit. 53 § 11701.246 (Supp. 1993).

16. *Id.* § 11701.251. Under this section, the following funds may not be withheld from the municipality: funds for capital projects under contracts in progress, funds relating to a declaration of disaster resulting from a catastrophe, and pension fund disbursements made pursuant to state law. *Id.*

Upon the adoption of an approved plan, the municipality may receive loans and grants administered out of a revolving fund, the central form of assistance provided by the Act.¹⁷ As of May 31, 1992, the DCA had made interest-free loans in the amount of \$4.7 million and grants in the amount of \$1.3 million to distressed municipalities.¹⁸

Financial assistance is not available to all municipalities. First- and second-class cities, as well as all counties, are precluded from obtaining loans or grants.¹⁹ Philadelphia, as the State's only first-class city, and Pittsburgh, as the State's only second-class city, are the only municipalities affected by this exception, which was created because of the limited amount of funds appropriated by the legislature.²⁰ In addition to the DCA, other interested parties may petition to have a municipality given distressed status, including the governing body of a municipality upon a majority vote, a creditor owed more than \$10,000, or 10% of the municipality's employees who have not been paid in 30 days or more.²¹

A distressed municipality is not entirely reliant on the State. When denied state assistance, a municipality may file a Municipal Debt Adjustment action under Chapter 9 of the United States Bankruptcy Code.²² In taking such action, the municipality is automatically given distressed status, bypassing the DCA screening.²³ The advantages to seeking Chapter 9 protection enable a municipality to keep all creditors in one forum and to automatically stay all pending lawsuits.²⁴ The

17. *Id.* §§ 11701.301-.303.

18. *See* STAFF REPORT, *supra* note 14, at 5.

19. PA. STAT. ANN. tit. 53 § 11701.303 (Supp. 1993). A first-class city has a population of more than one million people. PA. STAT. ANN. tit. 53 §§ 101 (Supp. 1993). A second-class city has a population between 500,000 and one million people. *Id.*

20. *See* STAFF REPORT, *supra* note 14 at 3.

21. PA. STAT. ANN. tit. 53 § 11701.202 (Supp. 1993). The Borough of Dupont is one community that sought to bring itself within the scope of the Act by demonstrating that it met four of the eleven criteria. *Borough of Dupont v. Department of Community Affairs*, 595 A.2d 688 (Pa. Commw. Ct. 1991). For a list of these elements, *see supra* note 12. At a public hearing, evidence showed that Dupont was able to extricate itself from its financial troubles, resulting in a denial of Dupont's petition by the Secretary of the DCA. *Borough of Dupont*, 595 A.2d at 690, 692. Dupont then sought judicial relief, but the court held that any determination should be left to the discretion of the Secretary. *Id.* at 692.

22. Requirements and procedures for filing Municipal Debt Adjustment actions are specifically set out in 11 U.S.C. §§ 901-946 (1987).

23. LOCAL GOV'T COMM'N, REPORT ON MUNICIPAL FINANCIAL DISTRESS — BACKGROUND AND LEGISLATIVE REMEDY, REPORT TO THE GENERAL ASSEMBLY OF 1988 at 13 (1987) [hereinafter REPORT ON MUNICIPAL FINANCIAL DISTRESS].

24. James E. Spiotto, *Introduction to Municipal Bankruptcy*, in THE PROBLEMS OF INDENTURE TRUSTEES AND BONDHOLDERS 1992: DEFAULTED BONDS AND BANKRUPTCY 611, 642 (Practising Law Institute, 1992).

disadvantages include the potentially exorbitant legal fees and the stigma of bankruptcy.²⁵ The Borough of Shenandoah was the first Pennsylvania municipality to choose Chapter 9 protection instead of Act 47 relief, believing that Act 47 restrictions would have tied the borough's hands in making its own decisions.²⁶ The borough's petition was dismissed, however, and Shenandoah was then granted distressed status by the DCA.²⁷

Act 47 has remained the option of choice among troubled municipalities, perhaps because of its many other beneficial provisions. In addition to the loans, grants, and financial planning assistance available, a municipality has the right to petition the court of common pleas for a tax increase above the maximum rates provided by law.²⁸ The Act also enables neighboring municipalities to merge in order to create a more viable economic unit.²⁹ In all, the legislation provides the municipality with many support and self-help mechanisms.³⁰

While Act 47 provides much needed relief to certain municipalities, it has brought on the wrath of labor unions. Municipal employees have generally been forced to bear the brunt of the financial restructuring required by the Act because plans have generally called for wage freezes and slashes in benefits in an attempt to establish fiscal stability.³¹ The next section analyzes the challenges labor unions have made to Act 47 and the consistently unsympathetic responses given by the Pennsylvania courts.

25. *Id.* For a closer look at the viability of the bankruptcy option available to small municipalities, see *infra* text accompanying notes 156-159.

26. Scott Aiges, *Shenandoah Files for Chapter IX Protection*, States News Serv., Apr. 20, 1988, available in LEXIS, Nexis Library.

27. STATUS REPORT, *supra* note 8, at 1.

28. PA. STAT. ANN. tit. 53 § 11701.123(c) (Supp. 1993).

29. *Id.* §§ 11701.401-.409. The process of merger derives from *Derry Township Supervisors v. Borough of Hummelston*, 326 A.2d 342 (Pa. 1974), the leading case on this procedure. Since Act 47 requires mutual consent before two municipalities can merge, attempts to merge have been generally unsuccessful because a solvent municipality naturally does not want to carry the burden of another municipality. For a discussion of solutions to this problem, see *infra* notes 153-54 and surrounding text.

30. See PA. STAT. ANN. tit. 53 §§ 11701.101-.501 (Supp. 1993).

31. See generally, COPING WITH FISCAL DISTRESS, *supra* note 7, at app. 2 (summarizing factors leading to fiscal distress in six distressed municipalities).

III. Labor Challenges to Act 47

A. Constitutional Challenges to Act 47

In *Wilkesburg Police Officers Ass'n v. Commonwealth*,³² a police officers' association brought suit seeking a declaration that Act 47 violated the Pennsylvania Constitution.³³ The association challenged the constitutionality of Act 47 on many grounds, the first of which alleged that the Borough's recovery plan violated many provisions of the collective bargaining agreement between the association and the Borough.³⁴ The court sustained the Commonwealth's demurrer to this claim because the State was not a party to the collective bargaining agreement.³⁵

The association's second count alleged that the DCA's power to withhold essential state funds ultimately allowed the coordinator to determine the content of the plan, constituting an improper delegation of fiscal authority in violation of Article III, Section 31 of the Pennsylvania Constitution.³⁶ The court, however, sided with the State and held that a state-appointed coordinator did not constitute the creation of a special commission because the State has the right to delegate necessary administrative details.³⁷ The court further noted that the Borough retained its decision-making authority through its power to reject the plan.³⁸

The association next argued that Act 47 violated Article III, Section 32(7) of the Pennsylvania Constitution, which prohibits the enactment of any "special law regulating labor."³⁹ The association's concern was that the Act gave Wilkesburg the indirect power to do what it could not do directly: circumvent the collective bargaining rights of its employees

32. 564 A.2d 1015 (Pa. Commw. Ct. 1989).

33. *Id.* at 1016. The Borough of Wilkesburg and the Department of Community Affairs were also named as Defendants.

34. *Id.* at 1017.

35. *Id.* at 1019.

36. *Id.* Article III, Section 31 provides that "[t]he General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever." PA. CONST. art. III, § 31.

37. *Wilkesburg*, 564 A.2d at 1019 (citing *Evans v. West Norriton Township Mun. Auth.*, 87 A.2d 474 (Pa. 1952)).

38. *Id.* at 1020.

39. Article III, Section 32 provides that "[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law . . . regulating labor, trade, mining or manufacturing" PA. CONST. art. III, § 32.

by binding itself to a strict recovery plan.⁴⁰ The court applied a rational basis test and found that the Act had a rational relationship to the valid State purpose of assisting one of its financially distressed municipalities.⁴¹ In sum, Act 47 withstood every constitutional challenge brought by the association. The next section analyzes labor's alternative argument that Act 47 conflicts with the collective bargaining rights of police officers and fire fighters.

B. Act 47 and the Right of Policemen and Firemen to Bargain Collectively

Passed pursuant to Article III, Section 31 of the Pennsylvania Constitution,⁴² Act 111 expressly gives police and fire associations the right to collectively bargain.⁴³ However, section 252 of Act 47 states that a collective bargaining agreement executed after the adoption of a plan shall not in any manner violate the provisions of the plan.⁴⁴ In *Wilksburg*, the police officers' association argued that Act 47 violated its right under Act 111 to bargain collectively with the municipality.⁴⁵ The association argued that Act 111 compelled mandatory collective bargaining, while the Commonwealth argued that the legislature intended section 252 to be an amendment to Act 111, suggesting that the legislature was constitutionally authorized to limit police officers'

40. *Wilksburg*, 564 A.2d at 1021. Act 47 provides that "[a] collective bargaining agreement or arbitration settlement executed after the adoption of a plan shall not in any manner violate, expand or diminish its provisions." PA. STAT. ANN. tit. 53 § 11701.252 (Supp. 1993).

41. *Id.*

42. *Id.* at 1020. Article III, Section 31 provides:

Notwithstanding the foregoing limitation or any other provision of the Constitution, the General Assembly may enact laws which provide that the findings of panels or commissions, selected and acting in accordance with law for . . . collective bargaining between policemen and firemen and their public employers shall be binding upon all parties and shall constitute a mandate to the head of the political subdivision which is the employer

PA. CONST. art. III, § 31.

43. Act 111 states that:

Policemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

PA. STAT. ANN. tit. 43 § 217.1 (1991).

44. PA. STAT. ANN. tit. 53 § 11701.252 (Supp. 1993). See note 40, *supra*, for the text of section 252.

45. *Wilksburg*, 564 A.2d at 1017.

statutory rights to collective bargaining.⁴⁶ The court agreed with the State, holding that the Constitution permits but does not require the General Assembly to enact a law such as Act 111 and that the legislature was therefore authorized to limit police officers' statutory rights to collective bargaining.⁴⁷

The conflict between Act 47 and Act 111 was relitigated in much greater detail in *FOP Lodge No. 34 v. City of Farrell*.⁴⁸ Farrell had been declared financially distressed in 1987 and had adopted a recovery plan effective through 1990.⁴⁹ In 1989, a board of arbitrators, assigned to create a collective bargaining agreement between the City of Farrell and the FOP, awarded an annual salary increase of \$1,000 to the police officers.⁵⁰ Farrell challenged the award, claiming that the recovery plan restricted increases in labor costs to approximately 2.5% per year.⁵¹ The trial court looked deeper into the plan and found language binding the City to no increases in either base pay or fringe benefits until 1991.⁵² The court therefore held that the arbitrator's award was illegal as a violation of Act 47, section 252.⁵³

On appeal, the FOP argued that section 252 of Act 47 only prohibited salary increases that violated the recovery plan.⁵⁴ It further argued that the language relied on by the trial court was only a recommendation in the plan and as such did not constitute a directive to Farrell to keep labor costs within a certain limit.⁵⁵ The court found that the recovery plan was devoid of any specific references to labor costs and that there was no proof that the award violated, expanded or diminished any provision of the plan.⁵⁶ In remanding the case, the court directed the trial court to determine what revenues were available, the priorities established for the use of these funds by the city, and the effect of the award on these priorities in order to find whether the award

46. *Id.* at 1020. For an evaluation of Act 111, see Kurt H. Donecker, *Assessing Pennsylvania's Police and Fire Collective Bargaining as Its Silver Anniversary Approaches*, 29 DUQ. L. REV. 695 (1991).

47. *Wilksburg*, 564 A.2d at 1020.

48. 590 A.2d 1327 (Pa. Commw. Ct. 1991).

49. *Id.* at 1329. The State responded with a six-month interest-free loan of \$651,000. *Id.* at n.3.

50. *Id.* at 1328.

51. *Id.* at 1330.

52. *City of Farrell*, 590 A.2d at 1330.

53. *Id.* at 1331.

54. *Id.*

55. *Id.*

56. *Id.* at 1333.

actually violated the recovery plan.⁵⁷ Thus, in the absence of restrictions in the plan, the burden of showing a violation of section 252 lies with the municipality.⁵⁸

The labor unions' challenges to Act 47 have all failed. In part, this reflects the careful drafting of the legislation by the General Assembly, which looked to the plans of other states when drafting Act 47.⁵⁹ It also reveals the court's recognition of the severe problems and potential chaos generated by a collapsed municipality and the need for a viable recovery plan.

While Act 47 has survived its legal battles, its stated goal of instilling fiscal integrity has been less than successful: a program evaluation reported little improvement in the underlying fiscal conditions of distressed municipalities.⁶⁰ The report concluded that the declining tax and economic bases of most of the jurisdictions suggests serious problems which cannot be fixed by the management solutions of Act 47.⁶¹ The report rather ominously added that the "State does not currently have the means to address" the deep-rooted problems of distressed municipalities.⁶² This Comment will next address the

57. *City of Farrell*, 590 A.2d at 1333. A strong dissent agreed with the majority that the award had not been shown to violate the plan, but disagreed with the need to remand the case. *Id.* (Kelley, J., dissenting). The dissent argued that because the plan had included other specific recommendations, the coordinator had the opportunity to include recommendations prohibiting or limiting salary increases but chose not to do so. *Id.* at 1335. The dissent's hostility towards the City and the coordinator derives from the City's use of Act 47 to avoid participation in the collective bargaining agreement. The dissent stated that "a public employer may not hide behind self-imposed legal restrictions." *Id.* at 1333 (citing *City of Washington v. Police Dep't of Washington*, 259 A.2d 437, 442 (Pa. 1969)).

58. Both *City of Farrell* and *Wilkesburg* demonstrate the need for distressed municipalities to limit their expenditures by cutting back on wage payments. Act 47 also grants authority to the municipality to raise revenues through an increase in taxes. The act provides that a "[municipality] may petition the court of common pleas of the county in which the municipality is located to increase its rates of taxation for earned income, real property, or both, beyond maximum rates provided by law." PA. STAT. ANN. tit. 53 § 11701.123(c) (Supp. 1993). Section 123(c) of the Act provides relief from the Local Tax Enabling Act which limits taxes on wages to one percent. *See* PA. STAT. ANN. tit. 53 § 6908(3) (Supp. 1993). The City of Clairton utilized this provision after being declared distressed when it petitioned the common pleas court to approve a tax increase on the earned income of residents and non-residents from 1% to 1.5%. *In re* Petition of the City of Clairton, 590 A.2d 838 (Pa. Commw. Ct. 1991). The United Steel Workers of America Local No. 1557 intervened, alleging that increasing the tax on nonresidents was unconstitutional, but the court rejected most of their claims as untimely and held that the municipality had met its burden of proving the need for the increase. *Id.* at 839-41.

59. *See generally supra* note 10.

60. *See* COPING WITH FISCAL DISTRESS, *supra* note 7 at 22. The study interpreted data from six ailing municipalities before and after the implementation of Act 47.

61. *See* COPING WITH FISCAL DISTRESS, *supra* note 7, at 23.

62. *See* COPING WITH FISCAL DISTRESS, *supra* note 7, at 23.

General Assembly's response to the fiscal problems of Philadelphia, the State's largest municipality.

IV. The Pennsylvania Intergovernmental Cooperative Authority Act of 1991 (Act 6)⁶³

A. *Summary of Philadelphia's Financial Crisis*

Municipal distress has not been limited to small communities in Pennsylvania. The same problems of shrinking tax bases and increasing costs that have afflicted the State's municipalities have hit Philadelphia on a much larger scale.⁶⁴ Social problems such as crime, drugs, homelessness and AIDS that plague all of society are especially concentrated in large cities such as Philadelphia, where the tax base and revenues have decreased because of a slumping regional economy.⁶⁵ The population has dropped from 2.1 million in 1950 to 1.6 million in 1990 because of the decline in manufacturing and the emigration of the middle class.⁶⁶ Fiscal mismanagement and reduced federal aid have also contributed to the problem.⁶⁷ The result of these factors, as of 1990, was a deficit of 1.3 *billion dollars*.⁶⁸ Philadelphia also earned the title of a "junk bond" city when financial services rated the city's debt below investment grade.⁶⁹

While Philadelphia was obviously in need of assistance, the State all too willingly turned its back on the City of Brotherly Love. Referring to the fiscal mismanagement prevalent in the City, one state representative warned against "flush[ing] some more of the State's dollars down the toilet of Philadelphia."⁷⁰ But when it became apparent in early 1991 that the City was going to default on its bond payments by

63. PA. STAT. ANN. tit. 53 §§ 12720.101-.709 (Supp. 1993).

64. Cooney, *supra* note 3, at 1.

65. Cooney, *supra* note 3, at 1.

66. Cooney, *supra* note 3, at 2.

67. Peter Cooney, *Philadelphia Bailout Bill Signed Into Law*, Reuter Bus. Rep., June 5, 1991, at 1, available in LEXIS, Nexis Library.

68. Cooney, *supra* note 3 at 2.

69. The specific legislative findings on this point are provided in section 103 of Act 6:

(2) That the financial difficulties have caused cities of the first class to lose an investment-grade credit rating and direct access to capital markets.

(3) That it is critically important that cities of the first class achieve an investment-grade credit rating and thereafter maintain their creditworthiness.

(4) That, without the ability to enter the capital markets, cities of the first class may face a fiscal emergency that could render them unable to pay their obligations when due and deliver essential services to their citizens.

PA. STAT. ANN. tit. 53 § 12720.103(2)-(4) (Supp. 1993).

70. [1991] 1 LEGIS. J.--HOUSE 612 (Statement of Rep. Chadwick).

June of that year because of a severe cash shortage, the State was forced to take action to avoid watching its largest city go bankrupt.⁷¹

B. Legislative Solutions

An early solution suggested by the Auditor General included the amendment of Act 47 to include Philadelphia within the scope of the Act's authority.⁷² This possibility was quickly dismissed because the City's needs went far beyond the provisions of Act 47.⁷³ The City's deficit is 260 times larger than the entire revolving fund of Act 47.⁷⁴

The Legislature began as it did with Act 47: by looking to the solutions implemented in other cities.⁷⁵ When New York City faced a budget crisis in 1975, that State's legislature responded by creating the Municipal Assistance Corporation (MAC), an independent organization designed to manage the city's finances.⁷⁶ The major function of MAC is to issue bonds for the city's benefit.⁷⁷ In addition to having the power to issue bonds for the city, MAC has the authority to veto labor contracts that are inconsistent with the financial plan.⁷⁸ New York, however, has

71. The legislature justified involving the State in the problems of Philadelphia through the following legislative findings:

(5) That, due to the economic and social interrelationship between among all citizens in our economy, the fiscal integrity of cities of the first class is a matter of concern to residents of the entire Commonwealth, and the financial problems of such cities have a direct and negative effect on the entire Commonwealth.

(6) That, because cities of the first class consume a substantial portion of Pennsylvania's farms, factories, manufacturing plants and service enterprises, economic difficulties confronting cities of the first class detrimentally affect the economy of the Commonwealth as a whole and become a matter of Statewide concern.

(7) That, because residents of cities of the first class contribute a substantial proportion of all Commonwealth tax revenues, a disruption of the economic and social life of such cities may have a significant detrimental effect upon Commonwealth revenues.

PA. STAT. ANN. tit. 53 § 12720.103(5)-(7) (Supp. 1993).

72. *Hafer Wants Audit on Philadelphia Aid*, UPI, Oct. 11, 1990, at 1, available in LEXIS, Nexis Library.

73. *Id.*

74. According to one estimate, the City's deficit was 1.3 billion dollars. See Cooney, *supra* note 3 at 2. Only \$5,000,000 was appropriated by the General Assembly for Act 47's revolving fund. PA. STAT. ANN. tit. 53 § 11701.501 (Supp. 1993).

75. Cooney, *supra* note 3, at 1. See also, Hugh Bronstein, *Election Not to Affect Progress of Bill*, UPI, May 20, 1991, at 2, available in LEXIS, Nexis Library.

76. N.Y. PUB. AUTH. LAW §§ 3030-3040 (Consol. 1988). "The legislature . . . declares that it is necessary for a municipal assistance corporation to be created to assist the city of New York in providing essential services . . . and in creating investor confidence . . . so that [the city] may retain its ability to sell its obligations to the public." *Id.* § 3031.

77. *Id.* § 3033 (granting MAC the power to issue up to ten billion dollars worth of bonds).

78. Bronstein, *supra* note 75, at 2. See also, [1991] 1 LEGIS. J.--HOUSE 613 (remarks of Rep. Hagarty); Andrew W. Lehren, *PICA's Test Looms as City Readies Attack of Finances*, PHILADELPHIA BUS. J., Feb. 3, 1992, § 1, at 1.

no counterpart to Article III, Section 31 of the Pennsylvania Constitution, which serves to balance the powers of the State and its municipalities.⁷⁹ Thus, MAC has greater power than any state-created authority would in Pennsylvania. Nevertheless, the Pennsylvania General Assembly chose to create a separate authority with restrictions on its powers because of the large revenues created by a bond issuance.⁸⁰

As stated, the goal of the Pennsylvania General Assembly was to help the City access capital markets without getting the State entangled in Philadelphia's fiscal troubles.⁸¹ To this end, the Legislature passed the 100-page Pennsylvania Intergovernmental Cooperative Authority Act for Cities of the First Class in 1991 (Act 6).⁸² This legislation created an oversight authority, the Pennsylvania Intergovernmental Cooperation Authority (PICA),⁸³ to provide financial assistance to Philadelphia, the State's only first class city. The Act enables PICA to issue bonds and divert the revenues to the City to be used for debt payments, cash shortages, and other fiscal needs.⁸⁴

79. See *supra* note 42.

80. Philadelphia receives its power through its home rule charter, approved in 1949 by the General Assembly:

[T]he City of Philadelphia . . . shall have and may exercise all powers and authority of local self-government and shall have complete powers of legislation and administration in relation to its municipal functions, including any additional powers and authority which may hereafter be granted to it. The City shall have the power to enact ordinances and to make rules and regulations necessary and proper for carrying into execution its powers

351 PA. CODE § 1.1-100 (1992). The power to create a home rule charter is granted by the Pennsylvania Constitution, which states that "[m]unicipalities shall have the right and power to frame and adopt home rule charters. . . . A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter, or by the General Assembly at any time." PA. CONST. art. IX, § 2. The result of the charter is to prevent the General Assembly from interfering with any of the matters coming within the scope of the City's powers. *Id.* While the legislature is interfering with Philadelphia's operations through the implementation of Act 6, it does so only at the request of the City, and therefore the will of the State is not being imposed upon the municipality. See generally PA. STAT. ANN. tit. 53 §§ 12720.101-.709 (Supp. 1993). For an in depth discussion of home rule, see WILLIAM D. VALENTE, LOCAL GOVERNMENT LAW: CASES AND MATERIALS 103-47 (1987).

81. The legislature intended to "create an authority that will enable cities of the first class to access capital markets for deficit elimination and seasonal borrowings to avoid default on existing obligations and chronic cash shortages that will disrupt the delivery of municipal services" PA. STAT. ANN. tit. 53 § 12720.102(b)(1)(ii) (Supp. 1993).

82. *Id.* §§ 12720.101-.709.

83. The Act specifies that "[a] body corporate and politic to be known as the Pennsylvania Intergovernmental Cooperation Authority is hereby created as a public authority and instrumentality of the Commonwealth, exercising public powers of the Commonwealth as an agency and instrumentality thereof." PA. STAT. ANN. tit. 53 § 12720.201 (Supp. 1993).

84. See *id.* §§ 12720.101-.709.

Because the main component of the solution is the sale of bonds, the General Assembly had to draft legislation that satisfied the doubts and insecurities of investors.⁸⁵ Any possibility of legal challenges to the authority or the ability of Philadelphia to file for Chapter 9 bankruptcy would ward off investors and make the bonds unmarketable.⁸⁶ The resulting legislation attempts to give the Authority maximum power without violating the constitution. In order to create tight legislation, the drafters looked to the lessons learned from the legal challenges to Act 47.⁸⁷

Act 47 and Act 6 have the same basic framework, both requiring long-term financial plans that must be approved before any assistance is received, with the same suspension of state funding if the plan is not approved.⁸⁸ Act 6, however, is not administered by the State's Department of Community Affairs, but by PICA, an independent authority created by the State.⁸⁹ PICA consists of five board members, with the Governor and the majority and minority leaders of the Senate and House each appointing one member.⁹⁰ In creating this authority, the State succeeded in distancing itself from the Philadelphia fiasco and in establishing an entity that has the wherewithal to issue bonds, a power beyond the scope of the DCA.⁹¹

Another difference is that the financial plan is created by the troubled City, unlike the Act 47 situation in which the DCA-appointed coordinator creates the financial plan.⁹² This was done for legal and practical reasons. Besides the practical reasons of the complexity of Philadelphia's budget and the short time frame, having the City develop its own plan reduces the force of the argument presented in the *Wilkesburg* case, which challenged the use of the coordinator's plan as an unconstitutional delegation of the municipality's fiscal authority.⁹³

85. See generally, *Moody's Issues Comment on Philadelphia*, PR Newswire, June 20, 1991, at 1, available in LEXIS, Nexis Library.

86. Lehren, *supra* note 78, at 3 ("A courtroom fight undertaken before PICA sells its bonds could delay a sale, frighten away investors and worsen Philadelphia's out-of-whack finances.").

87. See generally, Lehren, *supra* note 78 at 1.

88. Compare PA. STAT. ANN. tit. 53 §§ 11701.101-.501 (Supp. 1993) with PA. STAT. ANN. tit. 53 §§ 12720.101-.709 (Supp. 1993).

89. See *supra* note 83.

90. PA. STAT. ANN. tit. 53 § 12720.202 (Supp. 1993).

91. See *supra* notes 11-16 and accompanying text for a discussion of the role of the DCA.

92. Compare PA. STAT. ANN. tit. 53 § 12720.209 (Supp. 1993) with PA. STAT. ANN. tit. 53 § 11701.221(a), (d) (Supp. 1993).

93. *Wilkesburg Police Officers Ass'n v. Commonwealth*, 564 A.2d 1015, 1019 (Pa. Commw. Ct. 1989).

Act 6 contains a significant restriction on the first-class city that is not applied by Act 47 to municipalities. Section 211 prohibits the City from filing a petition for relief under Chapter 9 of federal bankruptcy law.⁹⁴ This prohibition became necessary because of the bond issuance not present in the Act 47 scenario and the use of outside investors, who would be deterred from investing in a troubled city that could seek protection from all of its creditors under Chapter 9.⁹⁵ The legislature also added one final clause to avoid lengthy litigation of the Act.⁹⁶ Section 702 provides that the Pennsylvania Supreme Court has "exclusive jurisdiction to hear any challenge to or to render a declaratory judgment concerning the constitutionality of this act"⁹⁷ The next section specifically addresses the collective bargaining clauses of Act 6, which constitute the most significant portion of the legislation in the eyes of labor unions.

C. Collective Bargaining Clauses

Largely in response to the litigation over Act 47, the legislature was much more thorough in drafting the collective bargaining section of Act 6. The language of Act 47 is very strong: "A collective bargaining agreement or arbitration settlement executed after the adoption of a plan shall not in any manner violate, expand or diminish its provisions."⁹⁸ The language of Act 6 is softer and states that a collective bargaining agreement not in compliance with a plan "shall not be void or voidable solely by reason of such noncompliance," but the City will have to resubmit a plan explaining where the funds are going to come from.⁹⁹ *City of Farrell* and *Wilksburg* demonstrated how a stringent clause could be challenged by Act 111, the Policemen and Firemen Collective Bargaining Act.¹⁰⁰

94. PA. STAT. ANN. tit. 53 § 12720.211(a) (Supp. 1993). The applicable federal bankruptcy law is 11 U.S.C. § 9 (1987). In addition, if there are no longer any bonds outstanding, a city of the first class must obtain approval in writing from the governor before any petition for relief may be filed. PA. STAT. ANN. tit. 53 § 12720.211(b) (Supp. 1993). One of the governor's responsibilities is to make sure that the petition is not an unjust attempt by the city to evade payment on its contractual obligations. *Id.* § 12720.211(c). The provision of Act 47 granting the right to file for bankruptcy is PA. STAT. ANN. tit. 53 § 11701.262 (Supp. 1993).

95. See David L. Dubrow, *Chapter 9 of the Bankruptcy Code: A Viable Option for Municipalities in Fiscal Crisis?*, 24 URB. LAW. 539, 544 (1992).

96. See generally, Lehren, *supra* note 78, at 3.

97. PA. STAT. ANN. tit. 53 § 12720.702 (Supp. 1993).

98. *Id.* § 11701.252 (Supp. 1993).

99. *Id.* § 12720.209(j)(2) (Supp. 1993).

100. See *supra* part III.B for a discussion of these cases and an analysis of Act 47 with respect to Act 111.

Act 6 also explicitly states, where Act 47 only implies, that the Act in no way affects collective bargaining agreements already in place.¹⁰¹ Lastly, in an effort to express the importance of the financial plan, Act 6 places certain duties on the board of arbitration reviewing the employee contract.¹⁰² If a board of arbitration awards a wage or benefit increase in excess of the allotment provided for in the plan, the board must state in writing that it has considered the plan and the ability of the city to pay the cost of the increase without affecting the level of service provided for in the plan.¹⁰³ The board must also state in detail all of the factors it took into account when reaching its decision.¹⁰⁴ The legislature intended that all of these changes and additions in the collective bargaining clause and throughout the entire Act would make the Act resistant to challenge and therefore make the bonds more marketable.¹⁰⁵

After much debate in both the House and the Senate, the Act finally passed on June 5, 1991.¹⁰⁶ The Act included a provision allowing the City to defer its payments into the employee pension fund.¹⁰⁷ This deferral was necessary as an immediate solution to the cash flow problem of the City, which faced debt payments that summer.¹⁰⁸ Mayor Rendell of Philadelphia then began to formulate a five-year plan, with the City's labor unions bearing the brunt of the reform.¹⁰⁹ Rendell released his five-year plan on February 20, 1992, calling for \$508 million in labor concessions through a four-year wage freeze, significant cuts in holidays and sick time, and an overhaul of the health benefit program.¹¹⁰ Philadelphia's four major unions filed suit that same day seeking to dismantle the oversight authority.¹¹¹ On March 5, 1992 the

101. PA. STAT. ANN. tit. 53 § 12720.209(j)(1) (Supp. 1993).

102. *Id.* § 12720.209(k)(1). Notably, these provisions are very similar to those set forth by the court in *City of Farrell*. See *supra* text accompanying note 57.

103. PA. STAT. ANN. tit. 53 § 12720.209(k)(1) (Supp. 1993).

104. *Id.* § 12720.209(k)(2).

105. See generally Dubrow, *supra* note 95, at 544 for a discussion of the impact of creditors' fears, especially with regard to the threat of bankruptcy, on the marketability of municipal bonds.

106. Cooney, *supra* note 67, at 1. The Senate passed an amended version of the House bill by a 30-17 vote, and the House approved the Senate amendments the following day by a 123-80 vote. *Id.* at 2.

107. PA. STAT. ANN. tit. 53 § 12720.705(c) (Supp. 1993).

108. See Matthew Purdy, *Pension Fund Gets a Short Check: Unions Vow Suits to Get Millions Due*, PHILADELPHIA INQUIRER, Oct. 2, 1991, at B1.

109. According to one estimate, the unions suffered 45% of the cutbacks. Steve Dickson, *Philadelphia Plan for Fiscal Recovery Comes Hours After Unions File Lawsuit*, BOND BUYER, Feb. 21, 1992, at 2.

110. Marc Duvoisin *et. al.*, *Since January, Unions Have Fought Rendell's Efforts to Rein Them In*, PHILADELPHIA INQUIRER, Oct. 6, 1992, at A6.

111. See Dickson, *supra* note 109, at 1. Philadelphia's major unions are the American Federation of State and County Municipal Employees (AFSCME) District Council 33, representing

City Council voted on and unanimously approved the Mayor's plan.¹¹² Approximately one month later, the oversight authority also approved it.¹¹³

V. Labor Challenges to Act 6

A. Overview

The suit filed by the unions was the last thing the City or PICA wanted. While they had full confidence in the constitutionality of Act 6, both realized that this challenge could scare off investors at worst and at least slow down the process of issuing the bonds and funneling the proceeds into the coffers of the City.¹¹⁴ The inclusion of Section 702 into Act 6 granting exclusive jurisdiction to Pennsylvania's supreme court proved valuable.¹¹⁵ The supreme court heard the arguments on April 7, 1992.¹¹⁶ The City had requested a quick decision in its briefs and arguments because of the urgent need for the bond proceeds.¹¹⁷ The court cooperated by issuing a one-sentence ruling a week later upholding the constitutionality of the legislation, stating that it would explain its reasoning at a later date.¹¹⁸ This ruling cleared the way for the bond sale on June 2, 1992, which raised \$474.5 million in revenue.¹¹⁹ The actual opinion was not released until July 8, 1992,¹²⁰ which, if not for the preliminary statement, would have delayed the issuance by at least two months.

The labor challenge, which represented the combined efforts of the city's two uniformed unions and the two non-uniformed unions, presented some of the same issues addressed in the earlier Act 47 litigation and also put forth two new challenges.

the city's blue-collar workers; AFSCME District Council 47, representing the city's white and grey collar workers; International Association of Fire Fighters' Local 22; and Fraternal Order of Police Lodge 5. *Fire Fighters and FOP File Suit Against PICA Law*, PR Newswire, Feb. 20, 1992, available in LEXIS, Nexis Library.

112. Duvoisin, *supra* note 110, at A6.

113. Duvoisin, *supra* note 110, at A6.

114. Lehren, *supra* note 78 at 3.

115. See *supra* text accompanying notes 96, 97.

116. *Local 22 v. Commonwealth*, 613 A.2d 522 (Pa. 1992).

117. See Dickson, *supra* note 109, at 2.

118. Steve Dickson, *Court Challenge to Oversight Board For Philadelphia Swiftly Dismissed*, BOND BUYER, April 15, 1992, at 1.

119. Dale Russakoff, *City's Comeback Tests Workers' Brotherly Love*, WASH. POST, June 7, 1992 at A3.

120. *Local 22*, 613 A.2d at 522.

B. The Constitutional Challenges to Act 6

The unions first claimed that Act 6 violated Article II, Section 1 and Article IV, Section 2 of the Pennsylvania Constitution because the PICA Board was unconstitutionally appointed.¹²¹ They alleged that because four of the members are appointed by the legislators and only one by the governor, Act 6 violated the separation of powers doctrine by placing the executive powers of the board in the hands of the legislative branch of the government.¹²² The court began its analysis of all of the constitutional challenges presented by the unions by stating generally that the court's review is based "upon a strong presumption of constitutionality."¹²³ The court dismissed the first claim for lack of standing because the unions had failed to show how their interests were affected by the means in which the board members were appointed.¹²⁴

The unions next alleged that PICA, created by Section 201 of Act 6, constituted a "special commission" in violation of Article III, Section 31.¹²⁵ The unions argued that the General Assembly had delegated to PICA the power to intervene with the workings of the City.¹²⁶ While this claim resurrected arguments made in *Wilksburg* and *City of Farrell*,¹²⁷ the unions had a stronger case because PICA was clearly a special commission, unlike the DCA which was merely a branch of the state government. The court found this point irrelevant, however, and held that PICA did not interfere with the municipal government of Philadelphia.¹²⁸ Because the City requested assistance and voluntarily entered into the cooperative agreement with the authority, the court held that PICA was not imposing its will on the municipality.¹²⁹ Furthermore, the court stated that Article III must be viewed in conjunction with other provisions of the constitution, namely Article IX,

121. *Id.* at 525.

122. *Id.* This first allegation came in the form of a *quo warranto* action, which is designed to test whether a person or entity exercising a power is legally entitled to do so. BLACK'S LAW DICTIONARY 1256 (6th ed. 1990). Generally brought by the Attorney General or the district attorney, a private party may not bring a *quo warranto* action unless it demonstrates the cause of the harm alleged. 613 A.2d at 525 (citing *Snider v. Thornburgh*, 436 A.2d 593, 600 (Pa. 1981)).

123. *Local 22*, 613 A.2d at 525. "[L]egislation will not be deemed unconstitutional unless it clearly, plainly and palpably violates some specific mandate or prohibition of the constitution." *Id.* (citing *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358, 1362 (Pa. 1986)).

124. *Local 22*, 613 A.2d at 526.

125. *Id.*

126. *Id.*

127. See *supra* part III for a discussion of these cases.

128. *Local 22*, 613 A.2d at 526.

129. *Id.*

Section 5, which enables the City to enter into such agreements.¹³⁰ Thus, the court concluded that the second claim was without merit.¹³¹

C. Act 6 and the Collective Bargaining Rights of the Unions

Although the court consolidated their suits, the uniformed and non-uniformed unions brought different claims regarding the violation of their collective bargaining rights because the two groups received their rights to bargain collectively under two different statutes.¹³² The police and fire unions alleged that Act 6 infringed on their rights granted under Act 111,¹³³ while the non-uniformed employees union challenged the state's ability to assist its municipalities.¹³⁴

1. *Police and Fire Union Claims.*—Because the *Wilksburg* and *City of Farrell* cases had already determined that the legislature could amend Act 111 through subsequent legislation,¹³⁵ the police and fire unions tried to present a new twist on this claim. They attacked section 209(k)(3)(i), which allows any party before a board of arbitration to appeal to a court of common pleas to review the board's findings as to the city's ability to pay.¹³⁶ The unions argued that this subsection unlawfully permits the interference of a third party, the court, in arbitration proceedings.¹³⁷ Ironically, this section was an amended version of the more restrictive collective bargaining clause in Act 47 that the courts had already upheld.¹³⁸ The legislature, by spelling out the rights of all the parties involved, had hoped to avoid this very situation. The court interpreted Act 6 in the same manner as the courts in

130. *Id.* Article 9, section 5 states:

A municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other governmental units including other municipalities or districts, the Federal government, any other state or its governmental units, or any newly created governmental unit.

PA. CONST. art. IX, § 5 (1969).

131. *Local 22*, 613 A.2d at 526.

132. The right of the police officers and fire fighters to bargain collectively derives from PA. STAT. ANN. tit. 43 §§ 217.1-.10 (1991), known as Act 111. The rights of non-uniformed public employees to bargain collectively is derived from the Public Employee Relations Act, PA. STAT. ANN. tit. 43 §§ 1101.101-.2301 (1991), known as Act 195.

133. *Local 22*, 613 A.2d at 526.

134. *Id.* at 527.

135. See *supra* part III.B for discussion of previous litigation of Act 111 in relationship to Act 47.

136. PA. STAT. ANN. tit. 53 § 12720.209(k)(3)(i) (Supp. 1993).

137. *Local 22*, 613 A.2d at 527.

138. See PA. STAT. ANN. tit. 53 § 11701.252 (Supp. 1993).

Wilkinsburg and *Farrell* had interpreted Act 47 and declared that Article III, Section 31 did not prohibit the modification of Act 111.¹³⁹

2. *Challenge From the Non-Uniformed Unions.*—The rights of the City's blue-collar and white-collar employees to bargain collectively is derived from the Public Employee Relations Act, known as Act 195.¹⁴⁰ The American Federation of State, County and Municipal Employees (AFSCME) alleged that Act 6, by requiring the City to demonstrate to PICA the viability of any collective bargaining agreement before any assistance could be received, amounted to economic coercion and therefore violated the good faith bargaining clause of Act 195.¹⁴¹ AFSCME's argument, however, merely rehashed the same argument put forth by the police officers' association in *Wilkinsburg*.¹⁴² The court held that these requirements did not impede the ability of the City to negotiate its own collective bargaining agreements.¹⁴³

In upholding the constitutionality of Act 6, the court also upheld the right of the State to aid its troubled municipalities. As the court stated, "[i]t would be anomalous, indeed, if the Pennsylvania Constitution were to prevent the legislature from assisting financially distressed cities."¹⁴⁴

The unions continued their fight. At the unions' request, the Pennsylvania Labor Relations Board assigned factfinders on June 26, 1992 to help resolve the labor dispute.¹⁴⁵ The City sued to have the Board's decision overturned because it locked in the current contract

139. *Local 22*, 613 A.2d at 527. See *supra* part III for a analysis of the legality of Act 47.

140. PA. STAT. ANN. tit. 43 §§ 1101.101-.2301 (1991).

141. *Local 22*, 613 A.2d at 528. The union referred to § 5.07(b) of the Intergovernmental Cooperative Agreement entered into by the City and the State pursuant to Act 6, which enables first class cities to seek assistance from the State. The section states:

After the approval by the Authority of a Financial Plan submitted pursuant to the Act and this Agreement, the City shall execute collective bargaining agreements in compliance with such Financial Plan. If the City executes a collective bargaining agreement, or receives an arbitration award . . . which is not in compliance with such Financial Plan, neither such collective bargaining agreement nor such arbitration award shall be void or voidable solely by reason of non-compliance, but the City shall as soon as practicable . . . submit to the Authority a proposed revision to the Financial Plan which demonstrates to the reasonable satisfaction of the Authority that revenues sufficient to pay the costs of such collective bargaining agreement or such arbitration award, as the case may be, will be available in the affected fiscal years of the Financial Plan.

Intergovernmental Cooperation Agreement by and between Pennsylvania Intergovernmental Cooperation Authority and The City of Philadelphia, § 5.07(b), Jan. 8, 1992, at 45 (emphasis added).

142. *Wilkinsburg*, 564 A.2d at 1019; see *supra* note 36 and accompanying text.

143. *Local 22*, 613 A.2d at 529.

144. *Id.*

145. *Duvoisin*, *supra* note 110, at 6.

terms for 60 days, barring the mayor from making any of the cuts proposed in his plan.¹⁴⁶ The supreme court held that the appointment of factfinders was illegal because the governing statute prohibited any appointment coming later than 130 days prior to the submission date.¹⁴⁷ In this situation, the factfinders were appointed almost three months after the budget submission date.¹⁴⁸

In striking down the factfinding, the court forced the labor dispute to a head.¹⁴⁹ On October 6, 1992, the non-uniformed employees went on a strike that lasted only 14 hours.¹⁵⁰ The unions succeeded in getting the wage freeze cut from four to two years, but had little other success.¹⁵¹ While both Act 47 and Act 6 have withstood many legal challenges, the true test of their strength is whether they can help solve any of the critical financial problems facing the State's municipalities. The next section of this Comment will discuss the adequacy of these acts in addressing such problems.

VI. An Analysis of the Adequacy of the State's Response and Additional Suggestions for Fiscal Recovery

A. Act 47

Labor can point to evidence which indicates that the problems of municipalities have not disappeared through the implementation of anti-labor programs, suggesting that wages are not the main problem and that blame is wrongly placed on the unions.¹⁵² While the municipal unions have no doubt received more than their share of the blame, the unions must accept the fact that wages are the major controllable element of a municipal fiscal budget. A city council cannot negotiate with poverty, crime or pestilence as it can with a union, since these social ills are largely beyond the control of small municipal governments.

There is no easy solution to the problems facing small municipalities, but Act 47 and its many provisions have the capability and the strength to see the State's small municipalities through a fiscal crisis. Giving the municipalities loans and grants provides short term

146. *City of Philadelphia v. Pennsylvania Labor Relations Bd.*, 614 A.2d 213 (Pa. 1992).

147. *Id.* at 214. The court relied on PA. STAT. ANN. tit. 43 §§ 1101.801, .802 (1991).

148. *Pennsylvania Labor Relations Bd.*, 614 A.2d at 214.

149. Duvoisin, *supra* note 110, at 6.

150. Duvoisin, *supra* note 110, at 6.

151. Duvoisin, *supra* note 110, at 6.

152. See COPING WITH FISCAL DISTRESS, *supra*, at 11; see also *supra* text accompanying notes 64-68.

assistance, but as the early results indicate, municipal governments must face the structural problems that loans cannot fix if they are to rebound.¹⁵³ In addition to cutting back on wages and benefits, municipalities must use the other powers granted in Act 47. Local governments having distressed status need to invoke the tax provision which allows them to raise taxes by up to 1.5%,¹⁵⁴ regardless of the political fallout that may result. While the resulting increase in revenue cannot itself solve the problem, when combined with wage cuts, state loans and grants, and improved fiscal responsibility, the distressed municipality faces a much better chance of survival.

A municipality that has unsuccessfully attempted these changes, or one whose future is so bleak that it needs to consider more drastic solutions, must next consider the option of merger. Particularly appropriate for communities gutted by the waning steel and coal industries, the process of merger allows communities to pool their resources and reduce expenditures by providing more efficient services.¹⁵⁵ Unfortunately, there is little incentive for a solvent municipality to merge with a fiscally distressed neighboring township.¹⁵⁶ To combat this problem, the legislature should amend Act 47 to include incentives for consolidation. The legislature could give the consolidated unit increased funding, special tax breaks and other perks to encourage merger.

The final option for a distressed municipality is bankruptcy.¹⁵⁷ Municipal governments must avoid the inclination to view this option as one to avoid at all costs because of the negative connotations associated with the process. The stigma surrounding bankruptcy has begun to subside because the number of corporations and small municipalities filing for bankruptcy has been increasing.¹⁵⁸ A severely distressed municipality must not wait too long before filing a bankruptcy petition because the bankruptcy code's many provisions can best prevent a total collapse of the government when they are quickly implemented.¹⁵⁹

153. See *COPING WITH FISCAL DISTRESS* *supra* note 7, at 12.

154. PA. STAT. ANN. tit. 53 § 11701.123(c) (Supp. 1993).

155. "Subsequent to consolidation or merger, the consolidated or merged municipality may, in accordance with existing contracts or arbitration award provisions and consistent with applicable laws, reduce the number of uniformed and nonuniformed employees to avoid overstaffing and duplication of positions in the consolidated or merged municipality." *Id.* § 11701.408(b).

156. See generally PA. STAT. ANN. tit. 53 §§ 11701.401-.423 (Supp. 1993) for the requirements of merger or consolidation.

157. See PA. STAT. ANN. tit. 53 §§ 11701.261-.263 (Supp. 1993) for the text of Act 47's bankruptcy provisions.

158. Aiges, *supra* note 26, at 1.

159. See generally Dubrow, *supra* note 95.

Bankruptcy enables a municipality to seek protection from its creditors and provides other benefits that help prevent complete insolvency, such as debt adjustment.¹⁶⁰

Act 47 provides many options, and it is up to each distressed municipality to determine which combination of alternatives should be implemented and in which order. As a legislative remedy, Act 47 represents a viable solution to the fiscal problems of small communities and the best assistance that the State could provide. While the State stopped short of creating an independent oversight authority, as it did in Act 6 for Philadelphia, such an authority would not have been useful to the small municipalities. The main purpose of the authority is to issue bonds to provide revenue for the City.¹⁶¹ This function is accomplished in Act 47 through the loans and grants distributed through the revolving fund, which provides enough funds to meet any short-term obligations that the municipality may face. Throwing more money at the problem through a bond issuance was therefore unnecessary as it would only increase the small municipality's long-term debt.

B. Act 6

While bankruptcy is an option for a small municipality, it would be disastrous for the City of Philadelphia to seek protection under bankruptcy law. The difference is that a large city like Philadelphia depends on its good credit rating to sell bonds.¹⁶² Reputation carries much less importance with small municipalities because they generally do not sell bonds. Thus, the General Assembly correctly focused on the problem of maintaining access to capital markets when it passed Act 6.¹⁶³

One of the major weaknesses to be found in Act 6 concerns the collective bargaining portion of the Act.¹⁶⁴ In spite of the judicial approval of the collective bargaining section of Act 47,¹⁶⁵ the General

160. 11 U.S.C. §§ 901-946 (1987). *See also supra* text accompanying notes 22, 24-25.

161. PA. STAT. ANN. tit. 53 § 12720.102(b)(1)(ii) (Supp. 1993).

162. Detroit's recent problems illustrates the need to maintain a good credit rating. The city recently had its credit rating dropped to noninvestment grade by Moody's Investors Service because of its chronic debt problems arising from the rough economic times the city has experienced. Barbara P. Noble, *A Downgraded Detroit Cries Foul*, N.Y. TIMES, Nov. 3, 1992, at D1. This decision will harm Detroit's ability to attract investors and its chances of a self-recovery. *See generally, id.*

163. *See supra* note 69.

164. *See* PA. STAT. ANN. tit. 53 § 12720.209(j-k) (Supp. 1993).

165. Act 47 prohibited any collective bargaining agreement from violating any provisions of the financial plan. PA. STAT. ANN. tit. 53 § 11701.252 (Supp. 1993). When this section was litigated, the court held that Act 47 constituted an amendment to Act 111, fully within the powers of the

Assembly nonetheless toned down the language of the similar section in Act 6 to the point where a city can accept any labor plan as long as it demonstrates what other portions of the budget will be reduced.¹⁶⁶ The Act requires only that the board of arbitrators include in writing any increases in wages or benefits above those levels set forth in the plan, explaining that it considered the city's financial plan and the city's ability to pay.¹⁶⁷

While the legislature may have succeeded in making the legislation less open to attack, it failed to make the bonds more marketable. The fear that the authority would not have the power to control labor could ward off investors even more than the fear of litigation. By softening its approach, the legislature made the Act less susceptible to attack, but also dulled the Act's teeth and likewise dulled the bonds' potential appeal to investors.

Another major weakness of the Act is its failure to establish guidelines by which the City could privatize many services that it provides its citizens. The process of privatization, in which a city contracts out public services to private companies instead of having its own employees perform the work, can potentially save Philadelphia millions of dollars each year.¹⁶⁸ Privatization has been occurring all over the country, but has met its toughest challenge in large cities like New York and Philadelphia.¹⁶⁹ The belief is that private companies can operate more efficiently than the City, potentially saving Philadelphia at least \$30 million per year in areas such as trash hauling, custodial services and vehicle repairs.¹⁷⁰

The legislature considered requiring the City to develop a privatization plan before it could receive any aid, but the proposed amendment was defeated.¹⁷¹ The plan would have required the City to provide (1) a list of its nonessential activities that could be farmed out to private companies to reduce the City's burden, and (2) a schedule by which the City intended to delegate those responsibilities through a

General Assembly. *Wilkesburg Police Officers Assoc. v. Commonwealth*, 564 A.2d 1015, 1020 (Pa. Commw. Ct. 1989).

166. Compare PA. STAT. ANN. tit. 53 § 11701.252 (Supp. 1993) with PA. STAT. ANN. tit. 53 § 12720.209(j) (Supp. 1993).

167. PA. STAT. ANN. tit. 53 § 12720.209(k) (Supp. 1993).

168. Michael D. Hinds, *Cash-Strapped Cities Turn to Companies to Do What Government Once Did*, N.Y. TIMES, May 14, 1991, at A12.

169. *Id.*

170. *Id.*

171. See [1991] 1 LEGIS. J.--HOUSE 598.

competitive bidding process.¹⁷² The proposed amendment limited the privatization process to nonessential areas because essential areas, such as those affecting the public health and welfare, were deemed "more important than the benefits of free market competition."¹⁷³

Municipal labor unions have understandably opposed privatization plans which would result in layoffs in some areas.¹⁷⁴ But if the City fails to improve its fiscal status, the result could be massive, across the board layoffs affecting workers in essential as well as nonessential areas.¹⁷⁵ The former option seems much more palatable. While the legislature has not included a privatization plan in Act 6, there is nothing preventing the City from taking the initiative and implementing its own policy of privatization as an additional element in its fiscal recovery plan.

Another problem with the solution proposed by Act 6 is not found within the legislation itself, but rather is a fundamental problem with state intervention. The State will have a difficult time accomplishing its goal of maintaining an arms-length relationship with the City. To illustrate, New York City's "temporary" oversight authority has been in place since 1975.¹⁷⁶ If this is any indication of PICA's future, the State may have received more than it bargained for when it created PICA for the initial bond issuance period of five years.¹⁷⁷

Aside from the above weaknesses, Act 6 represents a tremendous show of support from the State. But as the framework of Act 6 suggests, there is only so much assistance that the State can provide.¹⁷⁸ If Philadelphia is to recover, it must view the state aid as a one-time elixir, and not as a crutch upon which it can rely when problems arise. The City can make significant internal changes in addition to cutting labor costs. For example, replacing the City's outdated computer system can save hundreds of thousands of dollars each year.¹⁷⁹ The inefficiencies arising from political patronage, especially in the Parking Authority, must also be corrected in spite of the resulting political price.¹⁸⁰ In

172. *Id.* at 595.

173. *Id.* at 596 (statement of Rep. Gladeck).

174. Hinds, *supra* note 168 at 2.

175. PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTH., STAFF REPORT ON THE CITY OF PHILADELPHIA'S FIVE YEAR FINANCIAL PLAN, June 4, 1992, at 11 ("reduction in employment levels" is the reasonable alternative if the recovery plan fails).

176. N.Y. PUB. AUTH. LAW §§ 3030-3040 (1988).

177. PA. STAT. ANN. tit. 53 § 12720.204 (Supp. 1993).

178. *See generally id.*, §§ 12720.101-.709.

179. The current system cannot use computerized federal tax returns to determine who is cheating the city, resulting in an inefficient revenue collection system. *See Russakoff, supra* note 119 at A3.

180. [1991] 1 LEGIS. J.--SENATE 551 (Remarks of Sen. Fumo) ("the Philadelphia Parking

addition, the process of privatization must be implemented to reduce the waste and inefficiencies inherent in a large government.

Philadelphia must implement these changes and others like them to become self-sufficient. The State has intervened to secure the credit-rating of the city, but only the City can regain its good name and reputation.

VII. Conclusion

The municipal employees and the unions representing them were in a losing battle from the start. State intervention through Act 47 and Act 6 became necessary only because the municipalities were in dire straits. If the unions successfully prevented the General Assembly from assisting the cities, they would have only crippled their own long-term interests in job stability and increasing wages and benefits. The status quo might have been maintained had the unions succeeded in preventing the municipalities from lowering their labor expenses, but only at the cost of sending the municipalities into severe financial distress in the very near future. The likely result would have been massive layoffs and, except for Philadelphia, the possibility of bankruptcy. As it now stands, the employees have been forced to accept wage and benefit concessions that keep their city and their jobs intact.

The legislative remedies enacted by Pennsylvania's General Assembly are only short-term solutions. State intervention into the fiscal affairs of municipalities affects the autonomy of local governments and alters the bargaining position of labor unions. Because the State is acting for the good of the people, however, it is fully within its constitutional powers to intervene. Like a parent, the Pennsylvania General Assembly may provide guidance to avoid watching its municipalities make mistake after mistake.

Drew Patrick Gannon

Authority is an agency rife with waste and political patronage"). See also Hugh Bronstein, *Hafer Calls for Intervention in Philadelphia's Woes*, UPI, Mar. 27, 1991, at 1, available in, LEXIS, Nexis Library (stating that Department of Licenses and Inspection and the Traffic Court had receivable balances of \$90 million).

